

**OPINION  
43-39**

June 26, 1943(OPINION)

COUNTIES

RE: Depositories of Funds

Your inquiry of May eighteenth was recently placed on my desk to be answered.

I have examined the opinions on Section 714a8 of the 1925 Supplement as amended by Chapter 222 Session Laws of 1931, and I failed to find any wherein it is stated that a depository may be designated at any other time than January of each even-numbered year.

Evidently, the Legislature had some purpose in mind in providing that depositories should be designated in January of each even-numbered year, and it must also be noted that an exception to this was provided in the case of township supervisors and school boards of common school districts. I believe the rules laid down in the case of Divide County v. Baird, 55 ND 45 in syllabus number 5, is applicable here:

The legislature has prescribed the mode in which a bank may receive and a public corporation make a deposit of public funds. That mode is by a personal or surety bond as security. This statute is a part of a corporate charter, insofar as it relates to the exercise of the power of a bank. The power is express, not incidental or implied; and when a legislative enactment prescribed one mode of exercising an express power or privilege, it implies an inhibition to exercise the given power in any other way."

I, therefore, believe that it will be necessary for you to wait until the January meeting next year in order to designate your depository.

ALVIN C. STRUTZ  
Attorney General